

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

WSOU INVESTMENTS, LLC d/b/a
BRAZOS LICENSING AND
DEVELOPMENT,

Plaintiff,

V.

DELL TECHNOLOGIES INC., DELL
INC., AND EMC CORPORATION,

Defendants.

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CIVIL ACTION NO. 6:20-cv-479

JURY TRIAL DEMANDED

ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff WSOU Investments, LLC d/b/a Brazos Licensing and Development (“Brazos” or “Plaintiff”), by and through its attorneys, files this Complaint for Patent Infringement against Dell Technologies Inc., Dell Inc., and EMC Corporation (collectively, “Defendants”) and alleges:

NATURE OF THE ACTION

1. This is a civil action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. §§ 1, et seq., including §§ 271, 281, 284, and 285.

THE PARTIES

2. Brazos is a limited liability corporation organized and existing under the laws of Delaware, with its principal place of business at 605 Austin Avenue, Suite 6, Waco, Texas 76701.

3. On information and belief, defendant Dell Technologies Inc. is a Delaware corporation with a principal place of business at One Dell Way, Round Rock, Texas 78682.

4. On information and belief, defendant Dell Inc. is a Delaware corporation with a principal place of business at One Dell Way, Round Rock, Texas 78682. Dell Inc. is wholly owned by its corporate parent, Dell Technologies Inc.

5. On information and belief, defendant EMC Corporation is a Massachusetts corporation with a principal place of business at One Dell Way, Round Rock, Texas 78682. EMC Corporation is wholly owned by its corporate parent, Dell Technologies Inc.

JURISDICTION AND VENUE

6. This is an action for patent infringement which arises under the Patent Laws of the United States, in particular, 35 U.S.C. §§ 271, 281, 284, and 285.

7. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a).

8. This Court has specific and general personal jurisdiction over each defendant pursuant to due process and/or the Texas Long Arm Statute, because each defendant has committed acts giving rise to this action within Texas and within this judicial district. The Court's exercise of jurisdiction over each defendant would not offend traditional notions of fair play and substantial justice because each defendant has established minimum contacts with the forum. For example, on information and belief, each defendant has committed acts of infringement in this judicial district, by among other things, selling and offering for sale products that infringe the asserted patent, directly or through intermediaries, as alleged herein.

9. Venue in the Western District of Texas is proper pursuant to 28 U.S.C. §§1391 and/or 1400(b). Each defendant has established places of business in the Western District of Texas. Each defendant is registered to do business in Texas. Upon information and belief, each defendant has transacted business in this District and has committed acts of infringement in this District.

**COUNT ONE - INFRINGEMENT OF
U.S. PATENT NO. 8,402,129**

10. Brazos re-alleges and incorporates by reference the preceding paragraphs of this Complaint.

11. On March 19, 2013, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 8,402,129 (“the ‘129 Patent”), entitled “Method and Apparatus for Efficient Reactive Monitoring.” A true and correct copy of the ‘129 Patent is attached as Exhibit A to this Complaint.

12. Brazos is the owner of all rights, title, and interest in and to the ‘129 Patent, including the right to assert all causes of action arising under the ‘129 Patent and the right to any remedies for the infringement of the ‘129 Patent.

13. Defendants make, use, sell, offer for sale, import, and/or distribute in the United States, including within this judicial district, products such as, but not limited to, network management systems, including but not limited to, Dell’s OpenManage Enterprise (OME) and OpenManage Network Manager (OMNM) applications (collectively, the “Accused Products”).

14. The Accused Products can provide a console for managing hardware devices, including Dell servers, storage arrays, tape libraries, network devices (switches/routers), printers, and clients distributed throughout a network. From a central console, an administrator can exercise control based on proactive alerts and notifications. The Accused Products identify devices experiencing problems and alert the administrator to help reduce the risk of system downtime. Using a web-enabled graphical user interface, the administrator can monitor devices within the network:

Dell EMC OpenManage Enterprise is an intuitive infrastructure management console. It is designed to take the complexity out of IT infrastructure management. It delivers better results with less time and fewer steps. OpenManage Enterprise helps IT professionals balance time and energy between complex IT infrastructure and business goals.

<https://www.delltechnologies.com/en-us/solutions/openmanage/enterprise.htm>

OpenManage Enterprise

OpenManage Enterprise (OME) is a hardware management and monitoring console that provides a comprehensive view of devices. These devices include servers, chassis, network switches, and other third-party devices on the enterprise network.

https://topics-cdn.dell.com/pdf/dell-openmanage-enterprise-v32_api-guide2_en-us.pdf

15. Dell EMC recommended migration from OpenManage Essentials to OpenManage Enterprise for the future management of Dell EMC networking devices. Features from OpenManage Essentials have also been incorporated to OpenManage Enterprise to perform the health monitoring or resource monitoring of the network devices in the network.

Support for OpenManage Essentials

Note: OpenManage Essentials version 2.5 is the final release. OpenManage Essentials will not support future PowerEdge servers and no further product enhancements will be added. Dell EMC recommends migration to [OpenManage Enterprise](#) for future management of your Dell EMC devices. The [QuickMigrate Tool](#) is available to help migration from OpenManage Essentials to OpenManage Enterprise.

OME can increase system uptime, reduce repetitive tasks, and prevent interruption in critical business operations. The tool is easy to install providing a comprehensive management of Dell PowerEdge modular, rack and tower servers. OME also delivers extensive infrastructure health monitoring, control, and support for Dell EMC servers, storage, networking and 3rd party hardware. Download the last

<https://www.dell.com/support/article/de-de/sln312494/support-for-openmanage-essentials?lang=en>

Migration

- Minimum supported versions:
 - OpenManage Essentials version 2.5
 - OpenManage Enterprise version 3.2.1

<https://www.dell.com/support/article/de-de/sln310714/support-for-openmanage-enterprise?lang=en>

16. OpenManage Enterprise can be integrated with OpenManage Network Manager (OMNM) to view networking information. The Accused Products can monitor the performance

of the network devices, view and manage events, and display the results to track the status of network devices.

OpenManage Network Manager

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Key benefits

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- **Network administrator** can monitor health and performance of their network, create dashboards to capture important events and trends, and display them over time.

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- **View the Datacenter** by integrating with Dell OpenManage Essentials to view server and networking information in one place.

<https://www.dell.com/us/bsd/p/dell-openmanage-network-manager/pd?c=us&cs=04&l=en&s=bsd&redirect=1>

- OMNM can now display information gathered by OpenManage Essentials (OME). If you are already using OME to manage computer systems such as servers, etc. then it is possible to configure OMNM to synchronize with OME so that all of your data is available through OMNM. (28617)

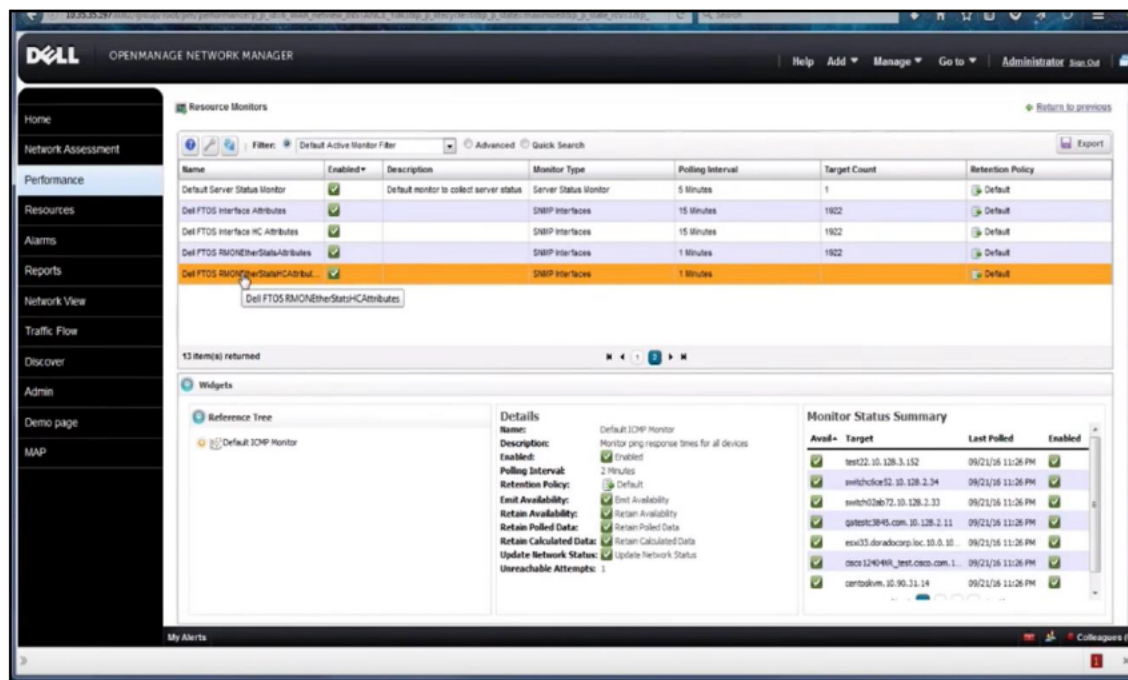
https://downloads.dell.com/manuals/all-products/esuprt_ser_stor_net/esuprt_networking/dell-openmanage-network-manager_owners-manual4_en-us.pdf

17. The Accused Products can provide performance monitoring where they can receive various SNMP attributes of the devices. There are various SNMP attributes related to resources that are predefined in the Network Manager. Events are reported to the Network Manager through SNMP traps, which monitor specific attributes of a device.

Networks with Dell EMC OpenManage NM

The beginning of network management with OpenManage NM is executing Discovery Profiles to discover resources on a network. After that occurs, you can configure System Topology, Resource Monitors, and Performance Dashboards.

<http://www.doradosoftware.com/assets/downloads/omnm/omnmv8userguide.pdf>



<https://www.youtube.com/watch?v=MNIJNVbeXLE>

SNMP Configuration

SNMP provides an interface to manage devices on the network such as servers, storage, switches, and so on. The SNMP agent on the device allows OpenManage Essentials to query the health and inventory data of the device. See [SNMP Configuration Options](#) to discover and inventory servers, storage devices, and other network devices.

https://topics-cdn.dell.com/pdf/openmanage-essentials-v25_users-guide_en-us.pdf.

18. The Accused Products use SNMP traps to monitor the rate of change of attributes of a device. These SNMP traps can be configured to generate alarms if the attribute being monitored crosses a certain threshold, and this alarm can be sent to a device on which the OpenManage Network Manager is installed.

SNMP Traps

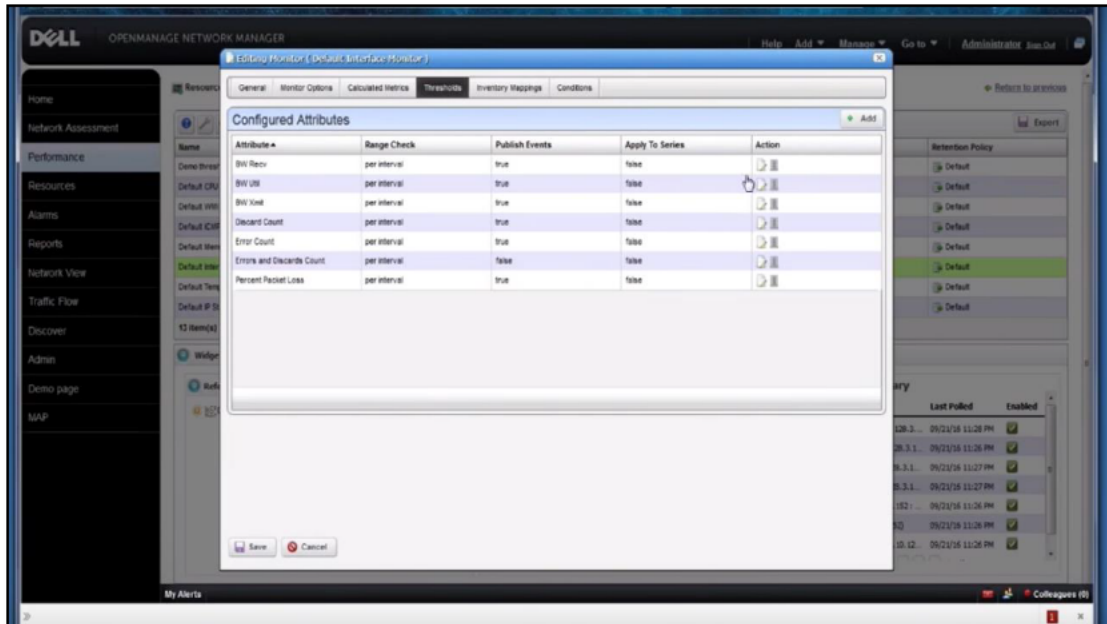
...

An SNMP trap is an asynchronous event indicating that something significant has occurred. This is analogous to a pager receiving an important message, except that the SNMP trap frequently contains all the information needed to diagnose a fault.

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In order for a management system to receive SNMP traps from a managed system, the node must be configured to send traps to the management system. Trap destination configuration is dependent on the operating system. When this configuration is done, a management application on the management system can wait for traps and act on them when received.

https://topics-cdn.dell.com/pdf/dell-openmanage-server-administrator-v8.3_connectivity-guide_en-us.pdf



<https://www.youtube.com/watch?v=MNIJNVbeXLE>

Key Features

The following are some key features of OpenManage NM:

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Automate and Schedule
Device Discovery

Device discovery populates OpenManage NM's database and begins network analysis. You can also create schedules to automatically run Discovery whenever you need to update the initially discovered conditions.

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Alarms	Alarms respond to hundreds of possible network scenarios by default, and you can configure them to including multiple condition checks. Alarms help you recognize issues before your network's users experience productivity losses. Alarms can also trigger actions like e-mailing technical support staff, executing Perl scripts, paging, emitting SNMP traps to other systems, Syslog messaging, and executing external application.
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<http://www.doradosoftware.com/assets/downloads/omnm/omnmv8userguide.pdf>

Table 187. Alert types		
Icon	Alert	Description
 Figure 29. Normal alert icon	Normal Alerts	An event from a server or a device that describes the successful operation of a unit, such as a power supply turning on or a sensor reading returning to normal.
 Figure 30. Warning alert icon	Warning Alerts	An event that is not necessarily significant, but may indicate a possible future problem, such as crossing a warning threshold.
 Figure 31. Critical alert icon	Critical Alerts	A significant event that indicates actual or imminent loss of data or loss of function, such as crossing a failure threshold or a hardware failure.

https://topics-cdn.dell.com/pdf/openmanage-essentials-v25_users-guide_en-us.pdf

19. The Accused Products have the power to monitor the attributes of a device and generate alerts on crossing a threshold. The OpenManage ecosystem is developed for the interoperability of products in the suite. The alerts generated by traps can be forwarded to

OpenManage Essentials to act upon.

Managing alerts



NOTE: You can receive alert notifications from OpenManage Essentials on your Android or iOS device by installing and setting up the OpenManage Mobile application. For more information, see [OpenManage Mobile Settings](#) and the *OpenManage Mobile User's Guide* at [Dell.com/OpenManageManuals](https://dell.com/openmanagemanuals).

With OpenManage Essentials you can:

- View alerts and alert categories
- Manage alert actions
- Configure alert log settings
- Manage MIB files
- Manage traps

https://topics-cdn.dell.com/pdf/openmanage-essentials-v25_users-guide_en-us.pdf

20. OpenManage Essentials features OnDemand Poll, which can act on alerts generated by SNMP traps that are received from the device being monitored. This OnDemand Poll can poll the performance attributes of the device. Also, OpenManage Essentials also provides the administrator with an option to run a custom script when an alert is received. The

administrator can use both OnDemand Poll and script to initiate a global poll of resources of the devices.

Table 1. Status Polling Schedule Settings	
Field	Description
Enable OnDemand Poll	<p>Select to query the global status of the device when an alert is received from the device.</p> <div style="background-color: #ffffcc; padding: 10px; border: 1px solid #ccc;"> <p>i NOTE: If a large number of alerts are received, multiple OnDemand polls are queued up and it may affect the system performance. In this scenario, it is recommended to turn off OnDemand poll and enable the regular status poll interval to retrieve the health status of managed devices.</p> </div> <p>If OnDemand poll is disabled, the device status only updates on the normal status poll.</p>

<https://www.dell.com/support/manuals/us/en/19/dell-openmanage-essentials-v2.2/ome22ug/status-polling-schedule-settings?guid=guid-1a47107a-e2c9-4102-b2e3-938477093317&lang=en-us>

Running a custom script

In response to a specific alert received, you can run custom scripts or launch a specific application. This file must be present on the OpenManage Essentials service tier system (where OpenManage Essentials is installed) and not on the client browser system. For example:

https://topics-cdn.dell.com/pdf/openmanage-essentials-v25_users-guide_en-us.pdf

21. An administrator also has the option to set a polling interval. When the time specified in the polling interval has elapsed, a polling action can be initiated.

Configuring Status Polling Frequency



NOTE: It is recommended not to schedule status polling at the same time as the Database Maintenance Execution Schedule, as the console is less responsive during database maintenance.

You can configure OpenManage Essentials to check the health status of all discovered devices that have a means of health instrumentation such as OpenManage Server Administrator. The status can be scheduled at a given interval using Status Polling so that health status is always current.

To configure status polling:

1. Click **Manage** → **Discovery and Inventory** → **Common Tasks** → **Status Schedule**.
2. In **Status Polling Schedule Settings**, select **Enable Status Polling** and provide the polling parameters including time and performance.
3. Click **OK**.

https://topics-cdn.dell.com/pdf/openmanage-essentials-v25_users-guide_en-us.pdf

22. In view of preceding paragraphs, each and every element of at least claim 3 of the ‘129 Patent is found in the Accused Products.

23. Defendants continue to directly infringe at least one claim of the ‘129 Patent, literally or under the doctrine of equivalents, by making, using, selling, offering for sale, importing, and/or distributing the Accused Products in the United States, including within this judicial district, without the authority of Brazos.

24. Defendants have received notice and actual or constructive knowledge of the ‘129 Patent since at least the date of service of this Complaint.

25. Since at least the date of service of this Complaint, through its actions, Defendants have actively induced product makers, distributors, retailers, and/or end users of the Accused Products to infringe the ‘129 Patent throughout the United States, including within this judicial district, by, among other things, advertising and promoting the use of the Accused Products in various websites, including providing and disseminating product descriptions,

operating manuals, and other instructions on how to implement and configure the Accused Products. Examples of such advertising, promoting, and/or instructing include the documents at:

- <https://www.delltechnologies.com/en-us/solutions/openmanage/enterprise.htm>
- https://topics-cdn.dell.com/pdf/dell-openmanage-enterprise-v32_api-guide2_en-us.pdf
- <https://www.dell.com/support/article/en-us/sln312494/support-for-openmanage-essentials?lang=en>
- <https://www.dell.com/support/article/en-us/sln310714/support-for-openmanage-enterprise?lang=en>
- <https://www.dell.com/us/bsd/p/dell-openmanage-network-manager/pd?c=us&cs=04&l=en&s=bsd&redirect=1>
- <https://www.youtube.com/watch?v=MNIJNVbeXLE>
- https://topics-cdn.dell.com/pdf/openmanage-essentials-v25_users-guide_en-us.pdf
- https://topics-cdn.dell.com/pdf/dell-openmanage-server-administrator-v8.3_connectivity-guide_en-us.pdf
- <http://www.doradosoftware.com/assets/downloads/omnm/omnmv8userguide.pdf>
- <https://www.dell.com/support/manuals/us/en/04/dell-openmanage-essentials-v2.2/ome22ug/status-polling-schedule-settings?guid=guid-1a47107a-e2c9-4102-b2e3-938477093317&lang=en-us>
- https://downloads.dell.com/manuals/all-products/esuprt_ser_stor_net/esuprt_networking/dell-openmanage-network-manager_owners-manual4_en-us.pdf

26. Since at least the date of service of this Complaint, through its actions, Defendants have contributed to the infringement of the ‘129 Patent by having others sell, offer for sale, or use the Accused Products throughout the United States, including within this judicial district, with knowledge that the Accused Products infringe the ‘129 Patent. The Accused Products are especially made or adapted for infringing the ‘129 Patent and have no substantial

non-infringing use. For example, in view of the preceding paragraphs, the Accused Products contain functionality which is material to at least one claim of the '129 Patent.

JURY DEMAND

Brazos hereby demands a jury on all issues so triable.

REQUEST FOR RELIEF

WHEREFORE, Brazos respectfully requests that the Court:

(A) Enter judgment that Defendants infringe one or more claims of the '129 Patent literally and/or under the doctrine of equivalents;

(B) Enter judgment that Defendants have induced infringement and continue to induce infringement of one or more claims of the '129 Patent;

(C) Enter judgment that Defendants have contributed to and continue to contribute to the infringement of one or more claims of the '129 Patent;

(D) Award Brazos damages, to be paid by Defendants in an amount adequate to compensate Brazos for such damages, together with pre-judgment and post-judgment interest for the infringement by Defendants of the '129 Patent through the date such judgment is entered in accordance with 35 U.S.C. § 284, and increase such award by up to three times the amount found or assessed in accordance with 35 U.S.C. § 284;

(E) Declare this case exceptional pursuant to 35 U.S.C. § 285; and

(F) Award Brazos its costs, disbursements, attorneys' fees, and such further and additional relief as is deemed appropriate by this Court.

Dated: June 2, 2020

Respectfully submitted,

/s/ James L. Etheridge

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Ryan S. Loveless

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Texas State Bar No. 24061296

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